

STATEMENT OF CONSIDERATIONS

REQUEST BY GE WIND ENERGY, LLC FOR AN ADVANCE WAIVER OF
DOMESTIC AND FOREIGN PATENT RIGHTS UNDER NREL SUBCONTRACT
NO. ZAM-3-31235-05 UNDER DOE CONTRACT NO. DE-AC36-98GO10337;
W(A)-03-033; CH-1159

As set out in the attached waiver petition and in subsequent discussions with DOE Patent Counsel, GE Wind Energy, LLC (GEWE) has requested an advance waiver of domestic and foreign patent rights for all subject inventions made under the above-identified subcontract by its employees and its subcontractors' employees, regardless of tier, except inventions made by subcontractors eligible to retain title to inventions pursuant to P.L. 96-517, as amended, and National Laboratories.

Referring to item 2 of GEWE's waiver petition, the purpose of this agreement encompasses the design, development, and testing of a 5.0 megawatt (MW) low wind speed turbine (LWST). The proposed project work plan entails using a 3.6MW LWST recently developed by GEWE as a baseline turbine and applying advanced technologies to be developed under the project to increase the baseline turbine's rating to 5.0MW with minimal incremental cost increase.

The work under this agreement is expected to take place over a period of 42 months at a total cost of \$19,380,000. GEWE is obligated to cost share \$9,190,000, or 50 percent of the total cost of the project.

In view of the cost sharing and other equities between GEWE and its subcontractors, it is anticipated that the parties will develop an appropriate allocation of patent rights among the participants to facilitate the expeditious development of the technology forming the subject matter of the agreement. Accordingly, DOE will waive title to all subject inventions made by GEWE's employees and its subcontractors' employees, regardless of tier, except inventions made by subcontractors eligible to retain title pursuant to P.L. 96-517, as amended, or National Laboratories, to GEWE or its subcontractors, as mutually agreed by the parties. Except as otherwise approved in writing by DOE patent Counsel, a party's acceptance of a subcontract under this agreement, at any tier, shall constitute GEWE's certification that it has provided that party with a copy of this Statement of Considerations and that party's notice to DOE that it accepts the terms and conditions of this advance waiver. Additionally, subcontractors who receive title under this waiver shall notify DOE Patent Counsel in writing of such disposition of patent rights.

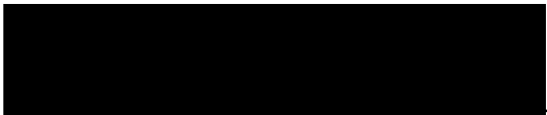
Referring to items 5-10 of GEWE's waiver petition, GEWE has been involved in the wind industry since 1981. The company entered the wind turbine design and manufacturing market in 1992 and is currently the only manufacturer of utility grade wind turbines in the United States. With over 1300 of its 1.5MW wind turbines in operation worldwide, as well as hundreds of other units, GEWE's expertise is respected throughout the world. This, coupled with GEWE's cost sharing, clearly demonstrates the likelihood that GEWE will continue development and commercialization of the results of this subcontract.

This advance waiver of the Government's rights in inventions is subject to the usual advance patent waiver and background data licensing provisions, and the government license, march-in rights, and preference for U.S. industry provisions set out in 35 U.S.C. 202-204. The

advance patent waiver also includes the attached U.S. Competitiveness clause (paragraph t) which requires products embodying any waived invention or produced through the use of any waived invention be manufactured substantially in the United States unless the participant can show to the satisfaction of DOE that it is not commercially feasible to do so. The contractor further agrees to make the above condition binding on any assignee, licensee or other entity acquiring rights to any waived invention, including subsequent assignees or licensees. Should the Contractor or other such entity receiving rights in any waived invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by DOE.

Again referring to item 10 of the waiver petition, granting this waived is not anticipated to have any adverse impact on competition. If anything, the technology forming the subject matter of this agreement can be expected to improve U.S. competitiveness relative to off-shore competition.


Considering the foregoing, it is believed that granting this waiver will provide Petitioner with the necessary incentive to invest its resources in the commercialization of the results of the agreement in a fashion which will make the technology available to the public in the shortest practicable time. Therefore, upon evaluation of the waiver petition and in view of the objectives and considerations set forth in 10 CFR part 784, all of which have been considered, it is recommended that the requested waiver be granted.


Thomas G. Anderson
Assistant Chief Counsel
Intellect Property Law Division

Date: 8/29/03

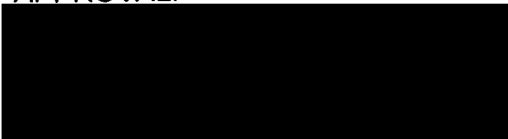
Based upon the foregoing Statement of Considerations and representations in the attached waiver petition, it is determined that the interests of the United States and the general public will best be served by a waiver of patent rights of the scope described above, and therefore the waiver is granted. This waiver will not apply to any modification or extension of the contract, where through such modification or extension, the purpose, scope or cost of the contract has been substantially altered.

CONCURRENCE:


for Peter R. Goldman, Director
Office of Wind and Hydropower
Technology Program
EE-2B

Date: 10/7/03

APPROVAL:


Paul A. Gottlieb
Assistant General Counsel for Technology
Transfer and Intellectual Property
GC-62

Date: OCT 14 2003

(t) U. S. COMPETITIVENESS

The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.

WAIVER ACTION - ABSTRACT

W(A)-03-033 (CH-1110)

REQUESTOR

GE Wind Energy, LLC

CONTRACT SCOPE OF WORK

5MW low speed wind turbine

RATIONALE FOR DECISION

50 % cost sharing

DISPOSITION